



REPUBLIC OF THE PHILIPPINES
SENATE ELECTORAL TRIBUNAL
COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,
Protestant,

- versus -

SET CASE No. 001-16

LEILA M. DE LIMA,
Protestee.

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RESOLUTION NO. 16-49

Protestant Francis N. Tolentino seeks reconsideration and setting aside of Resolution No. 16-37 dated 02 March 2017, whereby the Tribunal resolved, among others, to:

- "c. **REQUIRE** the Commission on Elections to retain custody and possession of, and to safeguard and preserve six (6) Consolidated Canvassing System (CCS) Laptops; the forty-five (45) Vote Counting Machines (VCMs) enumerated in Protestant's *Manifestation* dated 18 November 2016 and the one hundred six (106) VCMs and their Secure Digital (SD) Cards enumerated in Protestant's Motion dated 18 November 2016; and
- "d. **REQUIRE** Protestant Tolentino to deposit with the Tribunal within fifteen (15) days from receipt of this Resolution the amount of Two Million Two Hundred One Thousand Six Hundred Sixty Two and 40/100 Pesos (Php2,201,662.40), representing the cost of the retention by the Commission on Elections of the 106 Vote Counting Machines enumerated in his *Motion* dated 18 November 2016. Any right, if any, of Protestant Tolentino arising from his payment of the said amount shall be threshed out between Protestant Tolentino and COMELEC."

Protestant Tolentino submits that he should not be held liable for the cost of the retained machines and equipment because: a) it was the Commission on Elections (COMELEC) which failed to faithfully follow the resolutive condition in Resolution No. 16-17 dated 22 November 2016; and b) he was not in bad faith considering that the Rules of the Tribunal allow him to serve his submissions by registered mail and he did not think that the COMELEC would retain the subject VCMs since the resolutive condition still had to be complied with.

The alleged resolutive condition adverted to by Protestant Tolentino in Resolution No. 16-17 reads:

- "b) **Without prejudice to the Tribunal's ruling on Protestant Tolentino's failure to seasonably submit his Preliminary Conference Brief, DIRECT** the Commission on Elections to retain custody and possession of, and to safeguard and preserve six (6) Consolidated Canvassing System (CCS) Laptops, the forty-five (45) Vote Counting Machines (VCMs) enumerated in Protestant's Manifestation and the one hundred six (106) Vote Counting Machines (VCMs) and their Secure Digital (SD) Cards enumerated in Protestant's Motion, **SUBJECT** to the payment by Protestant of additional cash deposit to cover the costs of the said machines and equipment; and
- "c) REQUIRE Protestant Tolentino to deposit with the Tribunal not later than 29 November 2016 the amount of Three Million Three Hundred Fifteen Thousand Seven Hundred Eighty Five & 36/100 Pesos (P3,315,785.36), representing the cost of the aforesaid machines and equipment, computed as follows: x x x"

Protestant Tolentino posits the view that the above-quoted directive to the COMELEC imposed a resolutive condition which obligated the COMELEC to inquire and ascertain, before retaining the subject machines and equipment, whether or not Protestant had indeed paid the amount required of him not later than 29 November 2016. It appearing from its *Manifestation* dated 22 December 2016 that COMELEC failed to check with the Tribunal Cashier and/or Secretary regarding the payment, it would be unfair to find Protestant liable for the COMELEC's unilateral retention of the 106 VCMs.

Protestant Tolentino further argues that he cannot be said to have been in bad faith when he caused the service of a copy of his Manifestation and Motion by registered mail, instead of by personal service. Both the 2013 Rules of the Tribunal and the Rules of Court expressly allow the service of processes by a party through registered mail. In fact, the Manifestation and Motion was covered by the required affidavit of explanation why personal service was not possible.

Protestant Tolentino believed in good faith that the COMELEC would not unilaterally retain custody of the VCMs since the resolutive condition provided in Resolution No. 16-17 had still to be complied with. The COMELEC, at the time Protestant filed his Manifestation and Motion, was not yet authorized to retain custody of the subject VCMs. Protestant thus believed that he was not expected to serve an advance copy of his Manifestation and Motion upon the COMELEC on 29 November 2016, since there is nothing in the 2013 Rules of the Tribunal nor in the Rules of Court that requires the same.

Protestee de Lima, in her *Comment/Opposition (To: Protestant Tolentino's Motion for Reconsideration dated 15 March 2017)* dated 30 March 2017 and filed on 03 April 2017, "agrees with the position of the Commission on Elections and believes that SET Resolution No. 16-37 has remarkably explained why Tolentino should be made to pay the amount x x x representing the cost of the retention by the Commission on Elections of the 106 Vote Counting Machines enumerated in his Motion dated 18 November 2016."

She emphasizes that the retention of the VCMs, although an unnecessary relief, was granted by the Tribunal upon Protestant Tolentino's urging and undertaking to take on the cost relative thereto. He therefore cannot renege on his obligation by invoking provisions of the Civil Code which are clearly inapplicable. The requirement for him to pay the corresponding cost of the VCMs is not a resolutive condition, as it is not one that constitutes a "future and uncertain event, upon the happening or fulfillment of which rights which are already acquired by virtue of the obligation are extinguished or lost."

Protestee de Lima further avers that the COMELEC retained the subject VCMs and advanced the cost relative thereto in compliance with the directive of the Tribunal in Resolution No. 16-17 dated 22 November 2016, which was in turn issued upon Protestant Tolentino's instance. Considering that government funds were used to retain those VCMs, the public purpose requirement of Section 4(2) of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines, was not complied with since it was Protestant Tolentino who personally and solely benefited from it. All in all, no matter which way he looks at this, Protestant Tolentino is obligated to return to the government the funds that were used for his own personal gain.

The COMELEC, in its *Comment* filed on 11 April 2017, characterizes Protestant Tolentino's allegations in his *Motion for Reconsideration* as not constituting material grounds to warrant the reversal of the assailed Resolution, being a mere rehash of the arguments alleged in his *Comment on Manifestation and Motion* dated 05 January 2017, which had already been passed and ruled upon by the Tribunal in Resolution No. 16-37 dated 02 March 2017.

The COMELEC further portrays Protestant Tolentino's quotation and interpretation of Resolution No. 16-17 as "incomplete and inaccurate and therefore misleading." COMELEC insists that it was precisely in compliance with Resolution No. 16-17 that COMELEC was constrained to retain the 151 units of OMR Machines.

Based on the submissions of the parties as well as that of the COMELEC, it would appear that the only issue that needs to be resolved as raised in Protestant Tolentino's *Motion for Reconsideration* is the alleged existence of a resolutive condition which the COMELEC allegedly disregarded or ignored. It is the position of Protestant Tolentino that the phrase "SUBJECT to the payment by Protestant of additional cash deposit to cover the costs of the said machines and equipment" is in the nature of a resolutive condition and the COMELEC failed to perform its duty to determine the fulfillment of the resolutive condition before retaining custody of any VCM.

Protestant Tolentino's interpretation of Resolution No. 16-17 is inaccurate. As quoted above, the subject resolution contains two (2) direct orders: 1) a directive addressed to the COMELEC to retain custody and possession of, and to safeguard and preserve the machines and equipment enumerated therein; and 2) a directive addressed to the Protestant to deposit the cost of the machines and equipment. The two (2) Orders are separate and distinct instructions. The phrase "SUBJECT to the payment by Protestant of additional cash deposit to cover the costs of the said machines and equipment" simply refers to the obligation of Protestant Tolentino to settle all amounts due in favor of the Commission on Elections as a consequence of his *Motion* dated 18 November 2016.

The claim of Protestant that he was not in bad faith considering that the rules allow him to serve his submissions by registered mail, does not merit any consideration and the Tribunal maintains its earlier findings on the matter. As correctly pointed out by the COMELEC, the allegations in Protestant Tolentino's *Motion for Reconsideration* are mere rehash of the arguments set forth in his *Comment on Manifestation and Motion* dated 05 January 2017, which had already been passed and ruled upon by the Tribunal in Resolution No. 16-37 dated 02 March 2017. Other than the claim of *resolutory condition* which appears not to be applicable, Protestant Tolentino did not present any new evidence or strong argument that would convince the Tribunal to reconsider its findings in Resolution No. 16-37 dated 02 March 2017.

We further take note that by Protestant Tolentino's own admission, he received a copy of Resolution No. 16-37 on 06 March 2017, but filed his *Motion for Reconsideration* only on 21 March 2017 or fifteen (15) days from receipt of the Resolution sought to be reconsidered.

Rule 80 of the 2013 Rules of the Tribunal states in part:

"A party may file a motion for reconsideration of a decision under the evidence already of record within ten (10) days from service of a copy of the decision. Copies of the motion shall be served on the adverse parties, who may file a comment or opposition thereto within five (5) days from receipt thereof."

Although the aforementioned provision speaks of a decision, it applies with equal force to interlocutory orders of the Tribunal; in this case, Resolution No. 16-37 dated 02 March 2017. Any motion seeking its reconsideration should have been filed within ten (10) days from receipt of a copy thereof. Records show that while Protestant Tolentino's *Motion for Reconsideration* was dated 15 March 2017, the same was filed with the Tribunal on 21 March 2017 and copies thereof were served on the COMELEC and Protestee de Lima on the same date. Clearly, Protestant Tolentino was five (5) days late, considering that he only had until 16 March 2017 within which to file his motion.

If Protestant Tolentino were bent on pursuing the instant protest to its logical conclusion and with dispatch, he must observe the periods prescribed by the Rules of the Tribunal.

IN VIEW OF THE FOREGOING, the *Motion for Reconsideration* belatedly filed by Protestant Tolentino is **DENIED** for lack of merit.

The Tribunal Resolves to **DIRECT** Protestant Francis N. Tolentino to deposit with the Tribunal within ten (10) days from receipt of this Resolution the amount of Two Million Two Hundred One Thousand Six Hundred Sixty Two and 40/100 Pesos (Php2,201,662,40), representing the cost of the retention by the Commission on Elections of the 106 Vote Counting Machines (VCMs) enumerated in his Motion dated 18 November 2016.

Failure of Protestant Tolentino to seasonably comply with this Resolution shall cause the dismissal of the instant electoral protest and the Tribunal may likewise take such other action as it may deem equitable under the premises.

The Tribunal further resolves to **NOTE** the *Manifestation* of the Commission on Elections dated 04 April 2017, stating that Protestant Tolentino's *Motion for Reconsideration* was served on the Office of the Chairman instead of the Law Department and that there was no intention on the part of the COMELEC to

mislead the Tribunal or to delay the proceedings in filing the *Motion for Extension of Time to File Comment*.

SO ORDERED.

25 May 2017.



ANTONIO T. CARPIO
Senior Associate Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Member

LUCAS P. BERSAMIN
Associate Justice
Member



CYNTHIA A. VILLAR
Senator
Member

GRACE L. POE
Senator
Member




MARIA LOURDES NANCY S. BINAY
Senator
Member



RICHARD J. GORDON
Senator
Member



FRANKLIN M. DRILON
Senator
Member



ANTONIO "SONNY" F. TRILLANES IV
Senator
Member